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ALEXANDER L. STEVAS,
CLERK

No.

SUPREME COURT OF THE UNITED STATES

October Term, 1983

Nancy Dantzler, Petitioner

-v-

State of South Carolina, Respondent

PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF SOUTH CAROLINA

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Petitioner

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November 1, 1983

QUESTIONS PRESENTED

I.

Whether the South Carolina criminal courts used the "no-evidence" rule of Thompson v. Louisville, 362 US 199, instead of the rule announced in Jackson v. Virginia, 443 US 307, in determining that there was sufficient evidence upon which to convict the Petitioner of involuntary manslaughter.

II.

Whether the use by the State criminal courts of the "no-evidence" criterion of Thompson v. Louisville in determining the sufficiency of the evidence to convict the Petitioner of the crime of involuntary manslaughter denied to her constitutional due process of law.

III.

Whether the evidence adduced at trial was sufficient under the criterion of Jackson v. Virginia to support conviction of the Petitioner of the crime of involuntary manslaughter.

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TABLE OF AUTHORITIES

Jackson v. Virginia, 443 US 307 (1979) i,6,7,8,9,19,25

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OTHER REFERENCES

Rule 8, Section 10, Rules of the Supreme Court of South Carolina ...2,18

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The petitioner Nancy Dantzler respectfully prays that a Writ of Certiorari issue to review the order of the Supreme Court of South Carolina entered in this proceeding on August 2, 1983.

OPINION BELOW

State v. Dantzler, Op. No. 83-MO-175, (S.C.) unpublished.

JURISDICTION

The order of the Supreme Court of South Carolina was entered on August 2, 1983. A timely petition for rehearing was denied on September 1, 1983 and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. 1257 (3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment to the United States Constitution which provides in part as follows: "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Rule 8, Section 10, of Rules of Supreme Court of South Carolina:

Counsel desiring to attack or argue against a decision of this Court, with a view to asking the court to review, modify, or overrule the same, must petition the Court in writing, at least four days before the call of the case in which such argument is sought to be made asking permission to do so, and set forth the reasons why the decision in question should be reviewed, modified, or overruled.

STATEMENT OF THE CASE

The Petitioner was charged in State court with murder arising out of the death of her husband by gunshot wound on August 22, 1981. She was tried by judge and jury on March 24, 1982, and convicted of involuntary manslaughter. Sentence of three years was imposed. Manslaughter and involuntary manslaughter in South Carolina are lesser, included offenses of the charge of murder.

The conviction was appealed to the South Carolina Supreme Court, and that Court affirmed the conviction in its order of August 2, 1983. Appendix 15. Under its Rule 23 (Appendix 17), the State Supreme Court affirmed the conviction without discussion of the Petitioner's exceptions set forth in her appeal. Appendix 18. Timely motion for rehearing was denied on September 1, 1983.

The Petitioner testified that she and

her husband (the deceased) were quarreling in the marital home about the husband staying out late at night. Finally, the Petitioner told her husband to leave. He stated that he would not leave, and told the Petitioner not to remove any of his clothes from the house. The husband went into the bathroom and the Petitioner went to the open bathroom door to talk with him further.

When she got to the bathroom door, the Petitioner saw that her husband had gotten his pistol from where he kept it in the house and placed it on a counter before him in the bathroom. Fearing that her husband intended to use the pistol against her, the Petitioner grabbed it from the counter with her right hand. At the same instant, the husband reached for the Petitioner. She fell back to escape his grasp and the pistol accidentally discharged. The husband received a fatal bullet wound in the chest.

There was no direct evidence, nor any evidence from which it could reasonably be inferred, that the Petitioner handled the pistol in reckless disregard for the safety of others. With respect to involuntary manslaughter, Section 16-3-60, South Carolina Code, provides:

> With regard to the crime of involuntary manslaughter, criminal negligence is hereby defined as the reckless disregard of the safety of others. Any person charged with the crime of involuntary manslaughter shall be convicted only upon a showing of criminal negligence as defined in this section.

As the trial judge charged the jury, involuntary manslaughter in South Carolina is the unlawful killing of a human being without malice, either express or implied, and without the presence of an intention to kill.

REASONS FOR GRANTING THE WRIT

I.

WITH RESPECT TO REVIEW OF THE SUFFICIENCY OF EVIDENCE IN CRIMINAL CASES, THE SOUTH CAROLINA CRIMINAL COURTS ARE STILL APPLYING THE "NO-EVIDENCE" CRITERION OF THOMPSON v. LOUISVILLE, 362 US 199, WHICH STANDARD WAS ABANDONED BY THIS COURT IN IN RE WINSHIP, 397 US 358, AND JACKSON v. VIRGINIA, 443 US 307.

Since the South Carolina Supreme Court in this case gave no reason for its decision to affirm the conviction of the Petitioner, it must be assumed that the Court applied the "any evidence" rule used in State v. Halyard, 274 SC 397, 264 SE 2d 841 (1980), referred to by State Associate Justice Gregory in a dissenting opinion in State v. Simpson, 275 SC 426,

272 SE 2d 431 (1980), as the "any evidence standard of review". This is the same standard applied by this Court in Thompson v. Louisville, 362 US 199, and abandoned in In Re Winship, 397 US 358, and Jackson v. Virginia, 443 US 307. Jackson clearly announced the rule that a state criminal conviction cannot be upheld unless it is determined that upon the record evidence no rational trier of fact could have found proof of guilt beyond a reasonable doubt.

In addition to its decision in State v. Halyard, supra, the South Carolina Supreme Court further demonstrated its adherence to the "no-evidence" rule of Thompson v. Louisville, supra, by denying to appellant's counsel in a petition preliminary to arguments in State v. Stewart, 296 SC 296, 295 SE 2d 627, permission to argue against the standard set forth by the State Supreme Court in State v. Halyard, supra, in favor of the rule announced in Jackson v. Virginia,

supra. Appendix 18.

The South Carolina Supreme Court has announced no modication of its "any evidence" rule set forth in State v. Bailey, 253 SC 204, 170 SE 2d 376 (1964).

This situaton could result in denial of due process of law to every criminal defendant tried in the State when the question of the sufficiency of the evidence is an issue.

II.

UNDER THE JACKSON v. VIRGINIA STANDARD ESTABLISHED BY THIS COURT THERE WAS NOT SUFFICIENT EVIDENCE TO WARRANT A FINDING OF GUILTY OF INVOLUNTARY MANSLAUGHTER.

The claim of the Petitioner that she was convicted on evidence insufficient to support the verdict of guilty of involuntary manslaughter raises a substantial federal question that should

be reviewed by the federal court when the opinion of the lower court does not indicate what standard it applied in determining that the trial court committed no error of law.

Under the rule announced in Jackson v. Virginia, 443 U.S. 307, a state is proscribed from convicting a criminal defendant unless there is proof by which a rational trier of act can find beyond a reasonable doubt that the accused is guilty of the crime charged. No such proof was adduced by the prosecution in this case.

By its verdict, the jury found that there was no intent on the part of the Petitioner to shoot her husband. She was found guilty of involuntary manslaughter under an indictment charging murder. A charge of murder in South Carolina includes the lesser offenses of manslaughter and involuntary manslaughter. Involuntary manslaughter by definition is

the unintentional killing of another upon a showing of criminal negligence.

Under the evidence adduced by the prosecution, and under all the evidence in the record of the trial proceedings, there was insufficient evidence to support a finding of more than suspicion that the Petitioner was guilty of criminal negligence resulting in the shooting of her husband.

While the evidence could have supported a verdict of either murder or manslaughter, the verdict of guilty of involuntary manslaughter was tantamount to a finding of not guilty on the first two offenses, thus narrowing the question as to the sufficiency of evidence to whether or not the Petitioner was guilty of criminal negligence in the handling of the pistol. The question of intent to kill was removed from the case.

The only evidence adduced by the State with respect to the shooting itself was

that the Petitioner was holding the weapon when it was fired. All other prosecution evidence was pertinent only as to the cause of death and motive and opportunity of and for the Plaintiff to have shot the victim intentionally. The Plaintiff in her testimony gave a plausible explanation that the shooting was accidental. There is no evidence in the record upon which a rational trier of fact could have found that the Petitioner was guilty of a reckless disregard for the safety of others in her handling of the pistol.

To convict the Plaintiff upon such evidence denied to her constitutional due process of law.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and order of the Supreme Court of South Carolina affirming the Petitioner's conviction of the criminal offense of

involuntary manslaughter.

Respectfully
submitted,

JOSEPH C. COLEMAN
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for Petitioner
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November 1, 1983.

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, ...Respondent,
v.
Nancy Dantzler, ...Appellant.

Appeal From Richland County
William H. Ballenger, Judge

Memorandum Opinion No. 83-MO-175
Filed August 2, 1983

AFFIRMED

John W. Foard, Jr., and Joseph C. Coleman, both of Columbia, for appellant.

Attorney General T. Travis Medlock, Retired Attorney General Daniel R. McLeod, Assistant Attorney General Harold M. Coombs, Jr., and Staff Attorney Carlisle Roberts, Jr.; and Solicitor James C. Anders, all of Columbia, for respondent.

PER CURIAM: Appellant was convicted of involuntary manslaughter and sentenced to three years' imprisonment.

After careful consideration of the record and briefs, we are of the opinion that no error of law is present, and that a full written opinion would be without precedential value. Accordingly, the judgment of the lower court is affirmed under Rule 23 of the Rules of Practice of this Court.

s/ J. Woodrow Lewis C.J.

s/ Bruce Littlejohn A.J.

s/ J. B. Ness A.J.

s/ Gregory T. Gregory Jr. A.J.

s/ David W. Harwell A.J.

RULE 23 OF THE RULES OF THE SUPREME COURT OF SOUTH CAROLINA

Rule 23

[Memorandum Opinions]

After the return in any matter pending before this Court shall have been docketed, or at any subsequent stage of the appeal, the Court may file a memorandum opinion dismissing the appeal, affirming or reversing the judgment appealed from, or granting other appropriate relief when, in unanimous decision, the Court determines that a full written opinion would have no precedential value and any one or more of the following circumstances exists and is dispositive of a matter submitted to the court for decision: (1) that a judgment of the trial court is based on findings of fact which are not clearly erroneous; (2) that the evidence of a jury verdict is not insufficient; (3) that the order of an administrative agency is supported by such quantum of evidence as prescribed by the state or law under which judicial review is permitted; (4) that no error of law appears.

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM ORANGEBURG COUNTY

HONORABLE JOHN GRIMBALL, PRESIDING JUDGE

CRIMINAL NO. 80-GS-38-667

The State, Respondent.

vs.

Angela Z. Maita Stewart, Appellant.

PETITION

Pursuant to Rule 8, Section 10 of the rules of the Supreme Court of South Carolina, the undersigned attorneys for appellant, Angela Stewart, respectfully petition the Court to permit counsel for appellant to attack or argue against the decision of this Court in State v. Halyard, ___ S.C. ___, 264, S.E. 2d 841 (1980) holding that the standard of appellate review in a criminal case merely requires the court to determine whether there is "any" evidence to support a conviction, referred to as the

"traditional 'any evidence' standard of review" in the dissenting opinion of Mr. Justice Gregory in State v. Simpson, ___ S.C. ___, 272 S.E. 2d 431 (1980).

The basis for this request is the decision of Jackson v. Virginia, 443 U. S. 307, 99 S.Ct. 2781, 61 L.Ed. 560 (1979), also referred to in the dissenting opinion of Mr. Justice Gregory in State v. Simpson, supra. The United States Supreme Court in Jackson holds that in order to meet constitutional requirements, appellate courts must apply the standard of review of considering not whether there was any evidence to support a conviction, but whether, viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence to justify a rational trier of fact to find guilt beyond a reasonable doubt.

For the foregoing reasons, it is respectfully submitted that the petition to permit appellant to argue against the

standard of appellate review set forth in State v. Halyard, supra, be granted.

Respectfully submitted,

HAMMER, HAMMER AND BERNSTEIN

BY /s/ Henry Hammer
HENRY HAMMER
Columbia, South Carolina

WILLIAMS & WILLIAMS

By /s/ Charles H. Williams
CHARLES H. WILLIAMS

/s/ Karen J. Williams
KAREN J. WILLIAMS
Orangeburg, South Carolina

Attorneys for Appellant

October 9, 1981.

THE SUPREME COURT OF SOUTH CAROLINA

Frances H. Smith
Clerk

P.O.Box 11330
Columbia, S. C.

Ms. Karen J. Williams
Messrs. Williams & Williams
P. O. Box 1084 Orangeburg, South Carolina 29115

Re: The State v. Angela Stewart

Dear Ms. Williams :

The Court has issued the following order on your Petition for permission to argue against precedent in your argument in the above matter:

"Petition denied.

/s/ J. Woodrow Lewis C. J.
For the Court

October 20, 1981."

Very truly yours,
/s/ Frances H. Smith

CLERK

/spr

PERTINENT EXCEPTIONS OF APPELLANT
FILED BY PETITIONER IN
STATE SUPREME COURT

III.

The trial judge erred in submitting involuntary manslaughter to the jury. There was no evidence upon which a rational trier of fact could have found that the pistol, which was the instrument that caused the death of the victim, was used or handled by the defendant in a criminally negligent manner.

IV.

The trial judge erred in submitting involuntary manslaughter to the jury, because there was no evidence upon which a rational trier of fact could have found beyond a reasonable doubt that the defendant handled or used the pistol, which was the instrument that caused the death of the victim, in a criminally

negligent manner.

V.

The trial judge erred in submitting involuntary manslaughter to the jury. There was no evidence upon which a rational trier of fact could have found that any criminally negligent act of the defendant was a causal factor in the death of the victim.

VI.

The trial judge erred in failing to set aside the verdict of involuntary manslaughter. The jury by its verdict had found the defendant not guilty of murder or voluntary manslaughter, thereby removing intent to kill from the case. There was sufficient evidence upon which a rational trier of fact could have found that there was at least one reasonable

hypothesis other than involuntary manslaughter by which the death of the victim could be explained.

VII.

The trial judge erred in not setting aside the verdict of guilty of involuntary manslaughter. There was not sufficient evidence upon which a rational trier of fact could have found that any criminally negligent act of the defendant was a causal factor in the death of the victim.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

The State, Respondent,

-v-

Nancy Dantzler, Appellant.

APPEAL FROM RICHLAND COUNTY

William H. Ballenger, Judge

PETITION FOR REHEARING

The appellant Nancy Dantzler respectfully petitions the Court for rehearing in this matter. Ref.: Memorandum Opinion No. 83-MO-175, filed August 1, 1983.

The point thought by the appellant to have been overlooked by the court is the mandate of the United States Supreme Court in Jackson v. Virginia, 443 US 307, that the test to be applied in determining whether there is sufficient evidence to sustain a verdict of guilty in a criminal case is whether a rationala trier of fact could have found guilt beyond a reasonable

doubt, and not whether there is any evidence to support the verdict.

Columbia, South Carolina

August 11, 1983.

John W. Foard

Joseph C. Coleman

by /s/ Joseph C. Coleman
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29201

Attorneys for the Appellant.

ORDER DENYING REHEARING

"Petition denied."

/s/ J. Woodrow Lewis C.J.

/s/ Bruce Littlejohn A.J.

/s/ J. B. Ness A.J.

/s/ Gregory T. Gregory Jr. A.J.

/s/ David W. Harwell A.J.